

## II. REMARKS

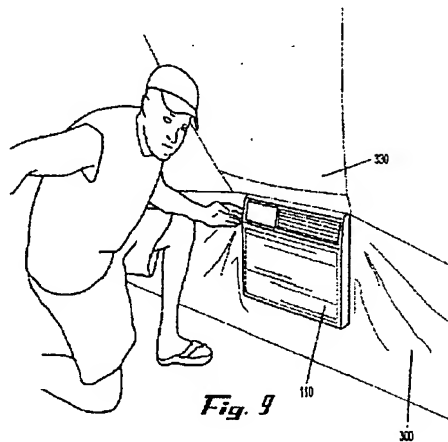
### Claim 97 Stands Rejected Under 35 U.S.C. §112, Second Paragraph

In the Office Action, claims 97 were rejected under 35 U.S.C. §112, second paragraph, as failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 97 has been amended to correct the antecedent basis for the term "flange."

### Claims 76-79 and 112-116 Stand Rejected Under 35 U.S.C. §102(b)

In the Office Action, claims 76 and 79 were rejected under 35 U.S.C. §102(b) as being unpatentable over U.S. Patent 5,970,661 (hereinafter Bishop et al.). Applicant disagrees.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference."<sup>1</sup> "The identical invention must be shown in as complete detail as is contained in the ... claim."<sup>2</sup> The elements must be arranged as required by the claim, but this is not an *ipsissimis verbis* test, i.e., identity of terminology is not required.<sup>3</sup> As shown in Fig. 9 of the present application, interior 330 of the tent 300 provides direct access to the front 110 of the climate control unit 100 in the operative configuration of the tent 300.



<sup>1</sup> See, *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

<sup>2</sup> See, *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

<sup>3</sup> See, *In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990).

Therefore, direct access to the climate control unit 100 is available to the user from within the interior 330 of the tent 300. As shown in Figs. 4 and 5 of Bishop et al., a mesh screen 39 is fixedly positioned across the passageway formed by shroud 33 just downstream from and parallel to the exhaust side of fan 16.

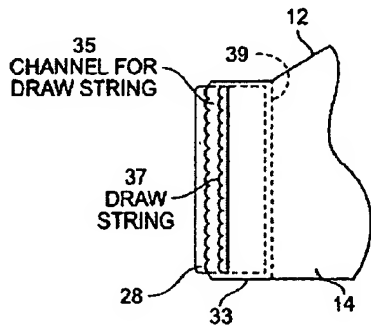


FIG. 4

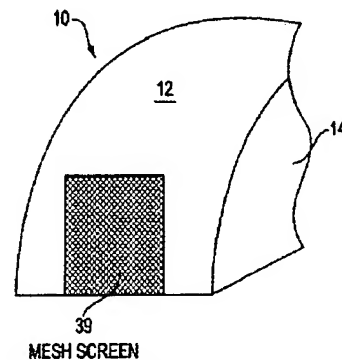
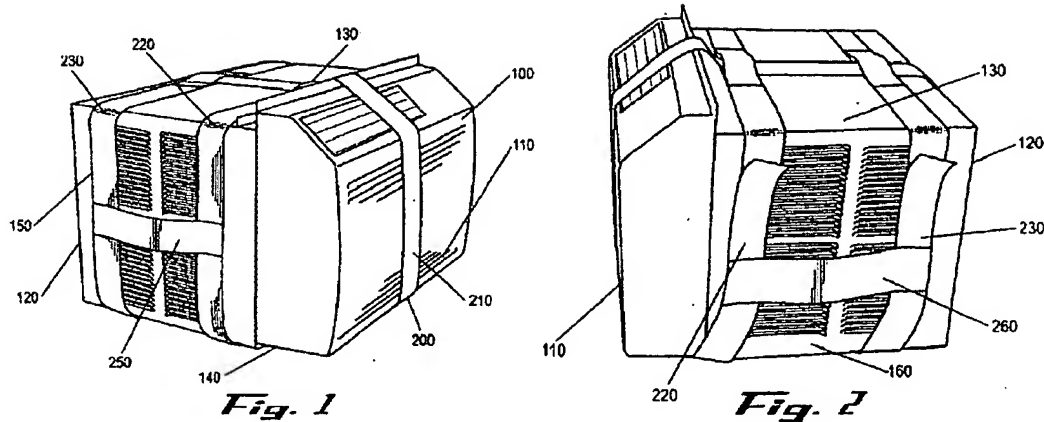


FIG. 5

The screen openings are sized large enough to minimize resistance to air flow, but small enough to prevent a child from inserting a finger through the mesh and into possible contact with the rotating fan blades." (Column 3 lines 13-19). Therefore, Bishop et al. does not provide direct access to the fan from within the tent. Applicant respectfully submits that contrary to the Examiner's contention, Bishop et al. emphatically states at column 4, lines 2-15, that "the weave of the fabric used must allow free passage of air so that a child can breath without difficulty through the fabric...[t]hat requirement totally precludes the use of plastic films and other impermeable sheets" (emphasis added). Moreover, the Bishop et al. reference teaches, "it is generally desirable to select a fabric that is at least semi-translucent to light so as to minimize any claustrophobic feelings of those playing in the structure." Therefore, by its own admission, the Bishop et al. reference is incompatible with the use of the materials outlined in the instant claims. Moreover, the reference discusses the extent of permeability being substantial as it points out that "the suitability of a particular fabric for use in this invention can be empirically determined through a simple test. Generally speaking if a person can breathe without difficulty through multiple layers, at least three, then the fabric is sufficiently permeable for use." (Col. 4, lines 8-15) Contrary to the Examiner's contention, Bishop et al. does not disclose a climate control unit carrier. The present invention, as shown in Figs. 1-2, provides for a carrier for climate control units.



In order to facilitate transport and placement of the climate control unit 100, the present invention provides a carrier 200 that can be adjusted to fit a variety of sizes of units 100. The carrier 200 preferably comprises at least one strap 210 that wraps around the unit 100 from front to back or from back to front, whichever the case may be. Additionally, at least one strap 220 is provided that runs substantially perpendicular to the at least one strap 210. When additional straps 230 are provided, enhanced support and portability is provided. Additionally, straps 250 and 260 connect straps 220 and 230 on the left 150 and right 160 sides of the unit 100, respectively. The climate control unit carrier may alternatively comprise a strap webbing much like a net to provide peristaltic motion to make carrying easier. Each strap is preferably made from a durable material such as ballistic nylon, canvas, polyester, or microfiber but may be a variety of other materials known in the art. There is no disclosure in Bishop et al. It is for this reason that Independent Claim 110, and the claims that depend thereon, are not anticipated or unpatentable over Bishop et al. For the foregoing reasons it is respectfully submitted that the Bishop et al. reference does not anticipate Independent Claims 76, 112 or the claims that depend thereon. It is for this reason that Applicant requests the rejection be withdrawn.

**Claims 97-98, 100-105, 107-111 and 117-119 Stand Rejected Under 35 U.S.C. §103(a)**

In the Office Action, claims 97-98, 100-105, 107-111 and 117-119 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,363,955 (hereinafter Louie) in view of U.S. Patent 5,970,661 (hereinafter Bishop et al.). Applicant respectfully submits that contrary to the Examiner's contention, the very elements that the Examiner suggests the Bishop et al. reference provides to Louie are lacking in that reference, as discussed above. Moreover, the material choice suggested in column 2, lines 2-37, of Louie, are directly incompatible with the material limitations of Bishop et al. described above. It is for the foregoing reasons it is respectfully submitted that Claims 97-98, 100-105, 107-111 and 117-119 are not unpatentably obvious over Bishop et al., in view of Louie, and are, therefore, in condition for allowance.

**Claims 99, 106, 120 and 121 Stand Rejected Under 35 U.S.C. §103(a)**

In the Office Action, claims 99, 106, 120 and 121, were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,970,661 (hereinafter Bishop et al.) in view of U.S. Patent 6,363,955 (hereinafter Louie) and further in view of U.S. Patent 6,796,896 (hereinafter Laiti).

In order to properly combine references, a teaching or motivation to combine the references is essential.<sup>4</sup> In fact, the Court of Appeals for the Federal Circuit has stated that, "[c]ombining prior art references without evidence of such a suggestion, teaching, or motivation simply takes the inventor's disclosure as a blueprint for piecing together the prior art to defeat patentability – the essence of hindsight."<sup>5</sup> Although the evidence of a suggestion, teaching, or motivation to combine the references commonly comes from the prior art references themselves, the suggestion, teaching, or motivation can come from the knowledge of one of ordinary skill in the art or the nature of the problem to be solved. *Id.* In any event, the showing must be clear and particular and "[b]road conclusory statements regarding the teaching of multiple references, standing alone, are not 'evidence.'" *Id.* Although the Court in *KSR Int'l Co. v. Teleflex Inc.* found that the teaching, suggestion and motivation test should not be rigidly applied, some teaching, suggestion, or motivation and a reasonable expectation of success are needed in order to properly combine references.<sup>6</sup> As stated above, the Bishop et al. and the Louie references are not a suitable reference as they both lack limitations of the present claims that cannot be added by other references without contradicting the aim of the invention. Additionally, as argued in

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<sup>4</sup> See, *In re Fine*, 337 F.2d 1071, 1075 (Fed. Cir. 1988).

<sup>5</sup> See, *In re Dembiczak*, 175 F.3d 994 (Fed. Cir. 1999).

<sup>6</sup> See, MPEP § 2143 (citing *KSR v. Teleflex Inc.*, 550 U.S. \_\_\_, 82 USPQ2d, 1385 (2007)).

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previous amendments, the Examiner's suggestion that a climate control unit can be placed in the Bishop et al. reference is a great departure from the purpose articulated in the reference. The purpose is not to condition the air but rather to inflate the structure. It is for the foregoing reasons it is respectfully submitted that Claims 97, 100 and 102 are not unpatentably obvious over Bishop et al. in view of Louie, further in view of Laiti and are, therefore, in condition for allowance.

### III. CONCLUSION

In view of the above, Claims 76-79 and 97-122 are pending and it is respectfully submitted that all of the pending claims in this application are in condition for allowance. Favorable action on this application is, therefore, solicited.

Respectfully submitted,

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